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APPLICATION NO	. F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,684		08/19/2003	Shinnosuke Nakahara	P24077	2735
7055	7590	11/22/2005	EXAMINER		
		BERNSTEIN, P	SNOW, BRUCE EDWARD		
RESTON,		RKE PLACE		ART UNIT	PAPER NUMBER
				3738	
				DATE MAILED: 11/22/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE of THIS COMMUNICATION. Extensions of time ray to available index the neversions of 37 CFR 1.13(p). In several, however, may a reply be terrely filed after 31(e) MONTHS from the maximum statutory period will apply, and will reply be terrely filed after 31(e) MONTHS from the maximum statutory period of 13 CFR 1.13(p). In several, however, may a reply be terrely filed after 31(e) MONTHS from the maximum statutory period will apply, and will reply to the terrely filed after 31(e) MONTHS from the maximum statutory period of 11.3(e) after 31(e) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply, and will reply be terrely filed after 31(e) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply, and will reply be terrely filed after 31(e) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply, and will reply be terrely filed after 31(e). If NO period for reply is specified above, the maximum statutory period will apply, and will reply be terrely filed after 31(e) and 3 (e) (filed on 31 October 2005. Status 1) ☑ Responsive to communication (s) filled on 31 October 2005. 2a) ☐ This action is FINAL. 2b) ☑ This action is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ☑ Claim(s) 1 and 3-6 is/are pending in the application is an accepted on 5 (e) (filed and 5 (e) (fi		10/642,684	NAKAHARA ET AL.
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DETAILED ACTION

Response to Amendment

Applicant's arguments filed 10/31/05 have been fully considered. Regarding the rejection in view of Crozet et al the Examiner new interpretation is described in the grounds of rejection below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, "withdrawal prevention portions... being formed <u>along with</u> a plurality of cutting lines" is ambiguous. As claimed, the withdrawal prevention portions and cutting lines are two separate elements which is incorrect.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 5 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for withdrawal prevention means being a claw portions, does not reasonably provide enablement "withdrawal prevention portions... being formed along with a plurality of cutting lines". As claimed, the withdrawal

prevention portions and cutting lines are two separate elements which is broader than that taught by the specification.

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "withdrawal prevention portions".

Allowable Subject Matter

Claims 3-4 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Note that the Examiner interpretation of the reference has changed. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Crozet et al.

Referring to 2, Crozet et al teaches an intervertebral cage inserted between vertebrae of a spine comprising:

a main body defined by a pair of upper and lower surfaces 6 and a pair of side surfaces connected thereto (a first side is interpreted as the surface wherein duct 14 is formed, a "side" does not have to be limited to a lateral or medial side; the pair would include any other side surface 8); and withdrawal prevention portions (pins 26 and the saw teeth) formed on the upper and/or the lower surfaces of the main body and regulate an insertion direction of the intervertebral cage; and wherein the withdrawal prevention means are formed along with a plurality of parallel cutting lines slanting at a predetermined angle with respect to one of the side surfaces (surface in which duct 14 is formed) of the main body.

Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being <u>clearly</u> anticipated by McGahan et al (2003/0130737).

Referring to at least Figure 4, McGahan et al teaches an intervertebral cage inserted between vertebrae of a spine comprising:

a main body defined by a pair of upper and lower surfaces 12, 14 and a pair of side surfaces (including elements 24 and 26) connected thereto; and

withdrawal prevention portions formed on the upper and lower surfaces of the main body, and being formed along with a plurality of cutting lines 31 slanting at a predetermined angle with respect to one of the side surfaces of the main body,

wherein the withdrawal prevention portions regulate an insertion direction of the intervertebral cage.

Claim 5, see axis 62.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW PRIMARY EXAMINER